

LETTER OPINION
98-L-5

January 8, 1998

Mr. Jerry Renner
Kidder County State's Attorney
PO Box 229
Steele, ND 58482-0229

Dear Mr. Renner:

Thank you for your letter forwarding questions from your clerk of district court/register of deeds relating to N.D.C.C. § 11-10-02, as amended by 1997 N.D. Sess. Laws ch. 31, § 7 (Senate Bill 2002). Your clerk of district court/register of deeds is concerned over the relationship between N.D.C.C. §§ 11-10-02 and 11-17-11. The former section relates to the county officers elected in certain counties based, in part, on population and action by the board of county commissioners, whereas the latter section relates to county options for state funding of the office of clerk of district court.

The questions presented are:

1. If the commissioners of a county with a population of under 6000, and in which the offices of clerk of district court and register of deeds are combined, exercise the option provided in 11-17-11 and subsequently that clerk of court is not approved or included in the budget of the supreme court, who will be responsible for the funding of the clerk of district court office for the term of that office?
2. In a county in which the office of clerk of court/register of deeds is currently combined, will the clerk of court position be listed on the ballot?
3. What will be the title of the office on the petition for nomination?
4. If the register of deeds performs the functions of the clerk of the district court, will that officer also be able to certify court documents, as well as all of the other duties now performed by the clerk of court?
5. If the county commissioners of a county under 6000 population do not pass a resolution exercising the option in 11-17-11, have they relinquished their

right to receive or contract for shared funding from the state?

In construing statutes, the primary goal is to discover the intent of the Legislature. Courts look first to the language of the statute in seeking to find legislative intent and if the statute's language is clear and unambiguous, the legislative intent is presumed clear on the face of the statute. Northern X-ray Company, Inc. v. State, 542 N.W.2d 733, 735 (N.D. 1996). The fact that the Legislature amends an existing statute is a clear indication that the Legislature intended to change the law. State Bank of Towner v. Edwards, 484 N.W.2d 281, 282 (N.D. 1992); Walker v. Weilenman, 143 N.W.2d 689, 694 (N.D. 1966). The questions will be responded to in order.

1. N.D.C.C. § 11-17-11 was enacted in 1989 and has not been amended. That section allows counties to request state funding for the office of the clerk of district court by employing an application process to the North Dakota Supreme Court, the Supreme Court's inclusion of the county's request for funding in its budget, and the enactment of appropriations necessary to fund that budget by the Legislative Assembly. If the Supreme Court does not approve the county's application, or if the Legislative Assembly does not enact appropriations sufficient to pay the proposed expenditures of the county, then it is my opinion that responsibility for funding the office and functions of the clerk of district court remains with the county.
2. Prior to its amendment in 1997, N.D.C.C. § 11-10-02 required the election of a clerk of district court in all cases unless functions were combined pursuant to other statutes, and provided for the election of a register of deeds in counties having a population of more than 6,000. That section also formerly provided that in counties having a population of 6,000 or less, the clerk of district court was also the register of deeds. However, after its 1997 amendment, N.D.C.C. § 11-10-02 now provides for the election of a register of deeds in all counties except those having redesignated offices under other law, and provides for the election of a clerk of district court "except as otherwise provided by this section." The section now requires in counties with a population of 6,000 or less that the register of deeds "shall perform the functions of the clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election." The manner in which the Legislature amended N.D.C.C. § 11-10-02 makes it apparent that

the intent now is for each county to elect a register of deeds and that in counties with a population of 6,000 or less the register of deeds perform the functions of the clerk of district court unless otherwise provided by the county commission.¹ Therefore, if there is no action by the county commission in such a county to separate the offices or redesignate the offices pursuant to other law, it is my opinion that the county office being filled should appear on the ballot as that of the register of deeds.

3. In counties with a population of 6,000 or less and where no other action separating the offices has been undertaken by the county commission, it is my opinion the title of the office on the petition for nomination will be register of deeds. (See N.D.C.C. § 16.1-11-11.)
4. The 1997 amendments to N.D.C.C. § 11-10-02 state that in counties having a population of 6,000 or less where the board of county commissioners has not resolved to separate the offices "the register of deeds shall perform the functions of the clerk of the district court." This language is equivalent to designating the register of deeds in those applicable counties as the ex officio clerk of district court. An ex officio officeholder is one who obtains authority without any other warrant or appointment than that resulting from the holding of a particular office. Black's Law Dictionary, p. 575 (6th ed. 1990). It is my opinion that in counties where the county commission has not acted to separate or redesignate the functions of the relevant offices, the register of deeds is the ex officio clerk of district court for the performance of the duties of the clerk of district court including certifying court documents and other duties. See generally N.D.C.C. § 11-17-01, et seq.
5. N.D.C.C. § 11-17-11 authorizes boards of county commissioners to initiate a process to transfer responsibility for clerk of district court funding to the state by filing a written notice with the state court administrator and for the Supreme Court and the Legislative Assembly to take appropriate actions thereafter. The language of the section states the written notice is to be filed with the state court administrator "before February first

¹ Furthermore, N.D.C.C. § 11-10-02 was also amended to provide that in counties of 6,000 or more persons, if the county commission elects to combine the offices of clerk of district court and register of deeds by resolution, the surviving office is the register of deeds.

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of the year prior to the start of the next state biennium." The statute does not contain a time period or date of a particular biennium by which this action must be taken. Therefore, for the duration of the existence of the statute, the action may be taken by a county before February 1st of any even-numbered year. Consequently, if a county does not take the appropriate action and file the appropriate notice accompanied by the required resolutions before February 1, 1998, it will have relinquished a possibility of state funding of the office of clerk of district court following the 1999 legislative session. However, contingent on the continued existence of the statute, another opportunity may arise for filing of the required notice before February 1, 2000, and thereafter. The concluding sentence of N.D.C.C. § 11-17-11 states that unfunded option counties shall remain in priority order for future legislative action. This retention in priority does not require any further action by a county that has once applied.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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